

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 22-001a. through z.

Specific Purpose/Factual Basis:

These sections are being renumbered from Sections 22-001a. through z. to Sections 22-001(a) through (z), respectively. The renumbering is necessary to maintain numerical consistency with other divisions throughout the Manual of Policies and Procedures.

Section 22-001(a)(1)(A)

Specific Purpose:

This section is being adopted to identify when the definition of "adequate notice" contained in Section 22-001(a)(1) is controlling.

Factual Basis:

This section is necessary to advise that the definition of "adequate notice" found at Section 22-001(a)(1) is superseded when a public social service program has specific adequate notice requirements that differ from that definition. Some programs such as Medi-Cal have their own definition of adequate notice.

Section 22-001(a)(3)(A)

Specific Purpose:

This section is being amended to add "Stage One Child Care, the California Assistance Program for Immigrants (CAPI), the Personal Care Services Program (PCSP), Kinship Guardianship Assistance Payment (Kin-GAP) Program, and AFDC-Foster Care" as public social services programs, within the definition of "aid." This section is also being amended to repeal "Transitional Child Care (TCC)" as a public social service program.

Factual Basis:

This amendment is necessary because Stage One Child Care, the California Assistance Program for Immigrants (CAPI), the Personal Care Services Program, Kin-GAP, and AFDC-Foster Care are new public social services programs which are subject to the state hearing process. The TCC Program is being repealed because that program no longer exists.

Section 22-001(a)(5)

Specific Purpose:

This section is being adopted to define “attorney” for purposes of Division 22.

Factual Basis:

This adoption is necessary to define who is an attorney for purposes of Division 22. These regulations include changes in the authorized representative regulation found at Section 22-085. In Section 22-085, an attorney will be permitted to represent a claimant without an authorized representative form and without the claimant being present if the attorney states on the record that he/she is representing the claimant's interests regarding the issues at the hearing.

Section 22-001(a)(5) is needed to define what is meant by an attorney so that the Administrative Law Judge (ALJ) can determine if the representative needs to obtain an authorized representative form.

Section 22-001(a)(6) -- Renumbered from Section 22-001(a)(5)

Specific Purpose:

Section 22-001(a)(5) is being renumbered to Section 22-001(a)(6).

Factual Basis:

A new Section 22-001(a)(5) is being added to define attorney. Since Section 22-001 is organized in alphabetical order, it is necessary to renumber the definition of authorized representative to Section 22-001(a)(6) for consistency in numbering.

Handbook Section 22-001(a)(6)(A) -- Renumbered from Handbook Section 22-001(a)(5)(A)

Specific Purpose:

The purpose of this change is to replace the term “legal counsel” with “attorney” in this handbook section.

Factual Basis:

This amendment is necessary so that the handbook reference is consistent with the newly defined term, attorney, in new Section 22-001(a)(5).

Section 22-001(a)(5)(C) -- Repealed

Specific Purpose:

This section is being repealed to relocate language advising the claimant that he/she may represent himself/herself and does not need to have an authorized representative.

Factual Basis:

This amendment is necessary to repeal language that is not part of the definition of "authorized representative" and to relocate it to the appropriate section in the regulations, Section 22-049 "The Hearing - General Rules and Procedures."

Section 22-001(c)(2)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to repeal the word "either" in listing the persons who may be a claimant and replace it with the phrase "any of the following" for clarity.

Sections 22-001(c)(2)(B)1. and 2.

Specific Purpose:

These sections are being amended to correct references in two regulatory citations referred to in the regulation and to clarify a person's rights regarding foster care rates grievance procedures.

Factual Basis:

This amendment is necessary because grievance procedures are found at Section 31-020, not Section 30-078 as presently referenced. There are no state hearing procedures with the State Hearings Division (SHD) in Section 11-407 as stated in the current regulation.

The current regulation states that there is a right to a hearing on group home rates. In fact, there is no right to a state hearing with the SHD on group home rates. Instead there is an Administrative review process found at Section 11-430.

Section 22-001(c)(2)(D)

Specific Purpose:

This section is being amended to change the term "caretaker relative" to "relative caring for a child" to describe who can be a claimant in a state hearing.

Factual Basis:

This amendment is necessary to clarify who has the right to be a claimant in a state hearing. The term "caretaker relative" is specific to CalWORKs and has a specific meaning. Hearings are conducted to review issues in several programs in addition to CalWORKs.

Section 22-001(c)(2)(G)

Specific Purpose/Factual Basis:

This section is being repealed because the Transitional Child Care Program was repealed by Assembly Bill 1542 (Chapter 270, Statutes of 1997).

Section 22-001(c)(3)

Specific Purpose:

The specific purpose of this adoption is to add a regulation that defines "compliance issue."

Factual Basis:

This adoption is necessary to distinguish "compliance issue" from "compliance related issues" in the definition section of these regulations. An ALJ has jurisdiction to review a compliance related issue, but no jurisdiction to review a compliance issue.

Sections 22-001(c)(4), (5), and (6) -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-001(c)(3), (4), and (5) are being renumbered to 22-001(c)(4), (5), and (6), respectively for consistency of format and ease of use.

Section 22-001(c)(6) -- Repealed

Specific Purpose:

This section is being repealed to delete the reference to "county hearing officer."

Factual Basis:

This repeal is necessary because the county hearing officer is the person who presides over a preliminary county hearing. These proposed regulations will repeal the entire preliminary hearing process contained in Sections 22-074 through 22-076 and all references to it.

Section 22-001(d)(2)(A), (B), and (C) and Handbook Section (d)(2)(A)

Specific Purpose:

The specific purpose of this amendment is to define the "decision of the director" to include language stating that such decision is an adopted proposed decision, a final decision or an alternate decision. Currently, the reference to an adopted proposed decision, final decision or alternate decision is in Handbook Section 22-001(d)(2)(A), which is being deleted.

Factual Basis:

This amendment is necessary to define "decision of the director" in the regulation as including an adopted proposed, final or alternate decision rather than unnecessarily adding a handbook section to define a "decision of the director". Handbook Section 22-001(d)(2)(A) is being restructured as Sections 22-001(d)(2)(A), (B) and (C) to more clearly define the type of decisions that are considered decisions of the director.

Section 22-001(f)(1)(C) -- Repealed

Specific Purpose:

This section is being repealed to delete reference to the filing date in preliminary hearings.

Factual Basis:

This repeal is necessary because these proposed regulations will repeal the entire preliminary hearing process and all references to such process are therefore obsolete.

Section 22-001(l)(1)

Specific Purpose:

This section is adopted to add a definition for the requirement that notices comply with Section 21-115.2.

Factual Basis:

This definition is necessary to have a simple way of referring to this regulatory requirement for notices. This reference is necessary because the Department has decided to establish a remedy in the state hearing process for failing to comply with this requirement for notices.

Section 22-001(p)(1) -- Repealed

Specific Purpose:

This section is being repealed to remove reference to preliminary hearings that will become obsolete with this regulation package.

Factual Basis:

This repeal is necessary as part of a general repeal of the entire preliminary hearing process.

Section 22-001(p)(1)

Specific Purpose:

This section is being added to define a "precedent decision" for purposes of Division 22.

Factual Basis:

This adoption is necessary because the SHD will be publishing specified decisions that will state California Department of Social Services' (CDSS) policy or interpretation of law. This precedent decision will be authority for future cases with identical or similar issues.

Handbook Section 22-001(p)(2)(A)

Specific Purpose:

This handbook section changes handbook language stating that a proposed decision "has no effect" instead of "will not resolve a state hearing case" unless it has been adopted by the Director or adopted by operation of law.

Factual Basis:

The change in language is necessary to more clearly state the effect when a proposed decision has not been adopted by the Director.

Section 22-002.1

Specific Purpose:

This section is being amended to state when the last "day" to perform an act required by the regulations instead of the last "date."

Factual Basis:

This amendment is necessary to be consistent with language used later in Section 22-002.1 that refers to day instead of date.

Section 22-003.13 -- Repealed

Specific Purpose/Factual Basis:

This section is being repealed. Repealing Section 22-003.13 is necessary because it has become obsolete as Section 63-605.326 has been repealed and there is no longer an alternate food stamp issuance system.

Section 22-003.14 -- Repealed

Specific Purpose/Factual Basis:

This section is being repealed because there is no longer a TCC program.

Section 22-003.15 -- Renumbered to Section 22-003.13

Specific Purpose:

This section is being renumbered from Section 22-003.15 to Section 22-003.13 because current Sections 22-003.13 and .14 are being repealed by this package. Also, language is being repealed which required a remand when a complaint of discourteous treatment was not subject to a state hearing.

Factual Basis:

The renumbering is necessary because the Sections 22-003.13 and .14 are being repealed. The repeal of language is necessary to avoid misleading and inaccurate wording. If the issue is one of discourteous treatment, the ALJ will dismiss the case but will not remand the case to the county as the current regulation states. Also, it is inaccurate to say that the dismissal will apply only if the claimant's complaint has not resulted in a denial, delay, discontinuance or reduction of services. There is no jurisdiction to review discourteous treatment whether or not there has been an adverse action. There is jurisdiction to review any adverse action which involves a denial, delay, reduction or discontinuance of services whether or not there has been discourteous treatment.

Section 22-003.14

Specific Purpose:

This section is being adopted to clarify that there is no right to a state hearing regarding any matter or issue that is properly before the juvenile court, including those matters or issues left to the discretion of the county welfare department by the juvenile court.

Factual Basis:

This adoption is necessary to clarify that while the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court. (See Welfare and Institutions Code Sections 245.5 and 304, and California Rules of Court, Rule 1403(c).) Furthermore, all child custody issues left to the discretion of the county welfare department or county probation department by the juvenile court may only be reviewed by the juvenile court. (See In re Jennifer G. (1990) 221 Cal. App. 3rd 752 and In re Moriah T. (1994) 23 Cal. App. 4th 1366).

Section 22-004.211 -- Repealed

Specific Purpose:

The specific purpose is to repeal this section encouraging claimants to use the reverse side of the notice of action to file a hearing request.

Factual Basis:

This amendment is necessary to repeal an unnecessary subsection that is only advisory in nature and has no force of law.

Section 22-004.212 -- Renumbered to Section 22-004.211

Specific Purpose/Factual Basis:

Section 22-004.212 is being renumbered to Section 22-004.211. This amendment is necessary because the current Section 22-004.211 is being repealed.

Section 22-004.22

Specific Purpose:

This section is being amended to repeal the reference advising counties to forward a copy of a written hearing request no later than three days after such request is received. The new language instructs the county to either forward a copy of the written request to the SHD within

three days after receipt or to directly online the hearing request when authorized to do so by the SHD. A sentence is also added instructing counties to provide the original hearing request to the ALJ at the hearing.

Factual Basis:

The amendments to this section are necessary because there are alternative methods of forwarding a hearing request to the SHD. The added sentence is necessary so that an ALJ can review the original hearing request.

Section 22-004.41

Specific Purpose:

The specific purpose of these amendments is to change the reference to "claimant's" estate to "decedent's" estate and state that if the decedent's estate is not in probate, the representative may be an "heir" rather than a "relative."

Factual Basis:

These amendments are necessary because:

- a) Under Welfare and Institutions Code Section 10965, an authorized legal representative may file a request for hearing on behalf of a decedent. The legal representative becomes authorized when testamentary letters are issued by the Superior Court. Until such time, an heir may file a request for hearing.
- b) Welfare and Institutions Code Section 10965 permits an heir to file a hearing request on behalf of a decedent if there is no legal representative. Since an heir is not necessarily a relative, the current reference in Section 22-004.41 to a relative is too restrictive.

Section 22-004.5

Specific Purpose:

The specific purpose of this amendment is to repeal the phrase "by or on behalf of the representative of the claimant's estate" in referring to those who may file a hearing request on behalf of a prospective claimant who dies before a hearing request has been filed.

Factual Basis:

This amendment is necessary to repeal unduly limiting language. Without the repealed language, Section 22-004.5 makes clear that the rules for filing a state hearing request are the same regardless of whether a claimant dies before or after a state hearing request is filed.

Section 22-009.11

Specific Purpose:

The specific purpose of this amendment is to clarify the 90-day time limit for requesting a state hearing. This section is also amended to add the words "or given" to describe the starting date of the 90-day time limit when the claimant receives the required notice.

This section is further amended to clarify an existing remedy for any failure to provide adequate notice and to add a new remedy for any failure to comply with Section 21-115.2 (use of written translations provided by CDSS). The remedy specified in this amendment is that any hearing request shall be deemed to be a timely hearing request if adequate notice was required but not provided or if the claimant does not receive an adequate and language-compliant notice.

Factual Basis:

This amendment is necessary to clarify the 90-day time limit to request a hearing. This amendment is also necessary because the current regulation which refers to the beginning date for purposes of filing a timely hearing request says that if the claimant received adequate notice, the date of the action is the date notice was mailed to the claimant. It is common practice for a county to give a notice of action to a claimant when the claimant is in the office. This amendment would clarify that the date of the action is the date the adequate notice is mailed or given to the claimant.

This amendment is also necessary to clarify an existing remedy for any failure to provide adequate notice. The reference to a language-compliant notice is being added to provide a regulatory remedy for the requirement that notices comply with Section 21-115.2. CDSS regulations do not currently specify remedies for failure to comply with this requirement. CDSS has decided to establish a remedy in the State Hearing process in order to further the purposes of Section 21-115.2.

Sections 22-009.12, .13, and .2 and Handbook Sections 22-009.21 and .22

Specific Purpose:

The specific purpose of this amendment is to repeal existing Section 22-009.12, renumber current Section 22-009.13 to .12, and adopt Section 22-009.2, to clarify the rule regarding the current amount of aid and to provide handbook examples to demonstrate how the current amount of aid rule works.

Factual Basis:

This amendment is necessary to reorganize this section in a more logical order. There are specific regulations regarding food stamp cases and those should be cited in Section 22-009.12. The rule regarding the current amount of aid applies to all programs including food stamps. It is more logical to have the regulation concerning the current amount of aid in Section 22-009.2, after the specific food stamp rule rather than before the food stamp rule and as a separate and distinct jurisdictional provision from Section 22-009.1. As presently organized, a reader could conclude that the rule concerning the current amount of aid does not apply to food stamp cases, when in fact it does apply to food stamp cases.

This amendment is also necessary because the language in the current regulation describing the current amount of aid rule is ambiguous and difficult to understand. This amendment divides the one sentence of the current regulation into two sentences. The first sentence specifically states that the claimant has a right to request a state hearing to dispute the current amount of aid. The second sentence explains that the review period begins with the date of the hearing request and extends back 90 days and includes any benefits issued during the entire first month in the 90-day period.

An additional sentence is necessary to clarify that the review applies only to facts that occurred during the review period. This is necessary to explain that while a recipient may request a hearing to dispute the current amount of aid, that review will not extend to facts that occurred prior to the review period.

Handbook Sections 22-009.21 and .22 give specific examples of how the current amount of aid rule works.

Section 22-045.1

Specific Purpose:

The purpose of this amendment is to permit the parties to agree to have a hearing conducted in a county other than the county where the claimant lives, when a claimant is a California resident.

Factual Basis:

This amendment is necessary for the convenience of parties to allow them to have a hearing conducted outside of the California county where the claimant lives if the claimant and the county agree to such arrangement.

Section 22-045.132

Specific Purpose:

This regulation is being amended to permit the ALJ to terminate a telephone hearing or video conference and schedule an in person hearing if the rights of either party, instead of just the claimant, are prejudiced by having a telephone or video conference hearing.

Factual Basis:

The amendment permitting the ALJ to terminate a hearing if either party's right to due process is prejudiced (rather than if the claimant's right is prejudiced) is necessary to assure due process to both parties to the hearing. The amendments adding references to videoconference hearings are necessary to clarify that the regulation applies to both telephone and video conference hearings.

Section 22-045.3

Specific Purpose:

The specific purpose of these amendments is to repeal reference to the SHD "delivering" notice to the parties of the date and place of the hearing and to state that the SHD will mail or provide notice to the parties "at least" rather than "not less than" ten days prior to the hearing.

Factual Basis:

These amendments are necessary because: 1) The SHD mails notice of hearing to the parties, but does not "deliver" the notice; and 2) It is necessary to use more precise language which describes when the SHD must mail or provide notice to the parties prior to the hearing.

Section 22-045.33

Specific Purpose:

The specific purpose of this subsection is to state that if a party does not receive written notice of the time and place of the hearing at least ten days prior to the hearing, that party shall be granted a postponement upon request.

Factual Basis:

This adoption is necessary to clarify that if a party that is entitled to written notice of the time and place of the hearing does not receive timely notice, that party may request and be granted a postponement.

Section 22-049.111

Specific Purpose:

The specific purpose of this adoption is to move text concerning the claimant's right to represent himself or herself that is currently in the definition of "Authorized Representative," at Section 22-001(a)(5), to the more appropriate section of the regulations.

Factual Basis:

This adoption is necessary because this text is not part of the definition of "Authorized Representative," but rather concerns hearing rules and procedures, as contained in Section 22-049. This language is necessary to implement Welfare and Institutions Code Section 10955, which states that a claimant may appear at the hearing in person with counsel of his own choosing, or in person and without such counsel.

Sections 22-049.52, .521, .522, and .523

Specific Purpose:

These sections are amended to provide claimants remedies for any county failure to issue a language-compliant notice. The first remedy specified in this amendment is that the claimant shall be entitled to a postponement for good cause if the claimant contends that he or she is not adequately prepared to discuss the issues because he or she did not receive the language-compliant notice. The second remedy specified in this amendment is that retroactive aid paid pending shall be available under the provisions of Section 22-072.5.

Factual Basis:

These amendments are necessary because current regulations do not specify remedies for county failure to issue language-compliant notices, and CDSS has decided to establish remedies in the State Hearing process in order to further the purposes of Section 21-115.2.

Section 22-049.522(a)

Specific Purpose:

This section is adopted to specify that a postponement pursuant to Section 22-049.522 shall be deemed a postponement for good cause.

Factual Basis:

The adoption of this section is necessary to clarify the treatment of the referenced postponement for purposes of good cause.

Section 22-049.522(b)

Specific Purpose:

The purpose is to adopt a subsection stating that if the claimant waives the adequate and language-compliant notice requirements, the ALJ will conduct a hearing on the substantive issues and submit a decision on the substantive issues.

Factual Basis:

This regulation is necessary to clarify that when the claimant waives the adequate and language-compliant notice requirements, the hearing shall be conducted and a decision issued on the merits.

Section 22-049.53

Specific Purpose:

The specific purpose for these amendments is to require the county to "prepare a position statement" rather than to "be prepared to submit evidence" when a jurisdictional issue is raised and to require both parties to be prepared to submit evidence on both the jurisdictional and substantive issues rather than just the substantive issue.

Factual Basis:

These amendments are necessary to clarify that the county is responsible for preparing a position statement on all issues per Section 22-073.25 even if the county raises a jurisdictional issue at the hearing.

When the county raises a jurisdictional issue, both parties need to be prepared to discuss the jurisdictional issue, and if the ALJ determines it is necessary, both parties must also be prepared to discuss the substantive issue.

Section 22-049.531

Specific Purpose:

This purpose of this amendment is to revise the current Section 22-049.531 and to adopt Subsections 22-049.531(a) and (b).

Factual Basis:

These amendments are necessary because:

- 1) The authority to dismiss a hearing by written decision due to a lack of jurisdiction is already contained in Section 22-054.3.

Revising Section 22-049.531 and adopting Subsections 22-049.531(a) and (b) will permit a party to make a written request prior to the hearing to the Presiding Judge to limit the issue to the jurisdictional issue. Once such request is made, the Presiding Judge will notify the parties whether they will have to prepare just for the jurisdictional issue or for the jurisdictional and substantive issues at the scheduled hearing.

- 2) These additions permit a party to request that a Presiding Judge limit the issue to a jurisdictional issue when the party believes a case should be dismissed for lack of jurisdiction. For example, in some cases, the county must prepare extensively for a hearing such as when the issue involves a five-year-old CalWORKs overpayment. With this new regulation, the county would be able to request the Presiding Judge in advance of the hearing to limit the issue to the jurisdictional issue so that the county would not have to prepare on the merits for a hearing when it alleges there is no jurisdiction. The Presiding Judge would make a preliminary ruling advising the parties whether the county should prepare on the jurisdictional issue only or must prepare on both jurisdictional and substantive issues.

Sections 22-049.532 and .532(a)

Specific Purpose:

The specific purpose of these amendments is to more clearly state the options available to the ALJ if the hearing is initially limited to a jurisdictional issue. Additionally, the purpose of Section 22-049.532(a) is to state that the ALJ may advise the parties orally at the hearing or in writing after the hearing whether he/she will conduct a continued hearing on the substantive issues rather than requiring the ALJ to send a written notice to the parties.

Factual Basis:

These amendments are necessary because the ALJ probably will determine at the hearing whether he/she needs to conduct a hearing on the substantive issues. These amendments permit the ALJ to either inform the parties orally at the hearing, or in writing after the hearing whether a continued hearing on the substantive issues is necessary.

Section 22-049.532(b)

Specific Purpose:

This section is being amended to:

- a) Provide that the ALJ may advise the parties orally at the hearing or in writing after the hearing whether a continued hearing will be held.
- b) Repeal the phrase in Section 22-049.532(b) "unless the time is waived by both parties."

- c) Repeal the last sentence in Section 22-049.532(b) that advises that if the ALJ conducts a hearing on the substantive issue(s), the ALJ's proposed decision will address both the procedural and jurisdictional issues.

Factual Basis:

The amendment regarding how the ALJ is to communicate with the parties is necessary to allow the ALJ to communicate orally or in writing concerning whether a continued hearing will be held.

The repeal of language regarding parties waiving time is necessary because that language is inaccurate. The ALJ is required to provide the parties with time to prepare on the substantive issues regardless of whether the parties waive time. In addition, the reference to both parties waiving time is inaccurate because only the claimant, and not the county waives time.

The repeal of the last sentence of Section 22-049.532(b) is necessary because it is gratuitous to state in regulation that if the ALJ takes evidence on the substantive issue, the ALJ's decision will address both the jurisdictional and substantive issue. In addition, since most decisions are final decisions, the reference to proposed decision in this regulation will usually be inaccurate.

Section 22-049.611

Specific Purpose:

The purpose of this amendment is to clarify that the interpreter for the hearing must have no personal or economic interest in the hearing.

Factual Basis:

This amendment is necessary to ensure that both parties in an interpreter case receive due process and that the interpreter, though qualified, has no personal or economic interest in the outcome of the hearing.

Section 22-049.63

Specific Purpose:

The purpose of this amendment is to add to the interpreter's oath the requirement to respect the claimant's confidentiality.

Factual Basis:

This amendment is necessary to require the interpreter to take an oath to respect the claimant's right to confidentiality in the hearing.

Section 22-050.21

Specific Purpose:

The specific purpose of this amendment is to clarify that the ALJ shall not be bound by the rules of procedure or evidence applicable in judicial proceedings.

Factual Basis:

This amendment is necessary to be consistent with Welfare and Institutions Code Section 10955 that says the person conducting the state hearing is not bound by rules of procedure or evidence applicable in judicial proceedings.

The current regulation stating that the rules of evidence as applicable in judicial proceedings shall not be applicable in state hearings is not completely correct. While the ALJ need not follow some rules applicable in judicial proceedings such as rules regarding admissibility of evidence, the ALJ will follow other rules of evidence, such as burden of proof and credibility.

Sections 22-050.44 et seq.

Specific Purpose:

The purpose of these amendments is to:

- a) Repeal Section 22-050.441 and incorporate part of its language to Section 22-050.44.
- b) Repeal extraneous language describing the right of parties to respond to the ALJ taking official notice of some fact.
- c) Repeal Section 22-050.442 that refers to "the tenor of the matter to be noticed."

Factual Basis:

These amendments are necessary to substitute more clear and concise language stating that the parties may be given an opportunity to respond when the ALJ takes official notice of some fact. These amendments are also necessary to repeal reference to the "tenor of the matter to be noticed" because that phrase has no clear meaning.

Section 22-053

Specific Purpose:

All of Section 22-053 is reorganized for clarity. Postponements are grouped together by type, and all aid paid pending provisions are grouped together under one heading. The section is also amended as set out below.

Factual Basis:

The reorganization amendments are necessary to clarify when postponements are available. The necessity for other amendments is set out below.

Section 22-053.1

Specific Purpose:

This section is amended to specify that postponements are subject to “the following” conditions rather than “limited” conditions.

Factual Basis:

This amendment is necessary to specify that the postponements are available as set out in Section 22-053, rather than under “limited” conditions, which is a less specific term.

Section 22-053.11

Specific Purpose:

This section is amended to add a heading for the new grouping by types of postponements, in this case, postponements upon claimant request.

Factual Basis:

This amendment is necessary for clarity.

Section 22-053.111 (renumbered from Section 22-053.11)

Specific Purpose:

This section is amended to specify that the postponement referred to in this provision is a first postponement, and that subsequent postponements are available in the Food Stamp Program for good cause, just as they are available in other programs (see Section 22-053.112).

Factual Basis:

This amendment is necessary to clarify the postponements available in the Food Stamp Program. The current provisions appear to allow only one postponement in the Food Stamp Program, which is incorrect. The Food Stamp Program allows one postponement without good cause, simply upon a claimant’s request, as well as additional postponements for good cause.

Section 22-053.112 (former Sections 22-053.112, .112(a), .14, and .141)

Specific Purpose:

This section is amended to delete the reference to “all other programs” and to specify that CDSS shall have the authority to require “written documentation” to verify good cause rather than “verification . . . to support the reason” for postponement. Former Section 22-053.141 is duplicative of the authority provided in this section and is therefore no longer listed as a separate section.

Factual Basis:

The amendment deleting “all other programs” is necessary to remove the ambiguity concerning the Food Stamp Program discussed above. The amendment concerning evidence supporting postponement is necessary to make specific what CDSS can require and to reference the specific basis for claimant-requested postponement used in this section – “good cause.” Former Section 22-053.112(a) is added to Section 22-053.112, and former Section 22-053.141 is incorporated in this section as part of the reorganization of the section done for clarity.

Section 22-053.113 (renumbered from Section 22-053.16)

Specific Purpose:

The “good cause” provision in Section 22-053.16 is moved to the “Claimant requests” section as part of the overall reorganization of Section 22-053 for clarity. The bases for good cause listed at Sections 22-053.113(a), (b), (c), (d) and (f) are current good cause bases and are listed at former Sections 22-053.161, 162, 163, 164 and .165. Sections 22-053.113(c) and (d) (former Sections 22-053.163 and .164) include small grammatical changes.

Section 22-053.113(f) (former Section 22-053.165) is amended as follows:

- 1) to allow good cause if a county does not make a position statement available “at least” two working days before the hearing rather than “not less than” two working days;
- 2) to add the word “substantially” to describe modifications of the position statement supporting postponement; and
- 3) to delete the cross-reference to Section 22-073.252.

Section 22-053.113(e) is renumbered from former Section 22-053.142; revised to reference new provisions of Section 22-049.52 relating to language-compliant notices of action; and otherwise revised to conform to Section 22-049.52.

Section 22-053.113(g) is new and is added to specify that good cause also includes “any other substantial and compelling reason as determined by the Administrative Law Judge.”

Factual Basis:

The reorganization amendments are necessary for clarity, and the grammatical changes are necessary to make the language grammatically correct.

The amendments to Section 22-053.113(e) are necessary to conform to amendments to Section 22-049.52, which adds as an additional basis for postponement failure to provide language-compliant notice. Other language changes are made in Section 22-053.113(e) to conform to Section 22-049.52, which states the same bases for postponement as Section 22-053.113(e).

The amendments to Section 22-053.113(f) concerning the county's duty to make the position statement available are necessary to correctly and clearly describe that duty. The amendment to add the word "substantially" to Section 22-053.113(f) is necessary to clarify the type of modifications of the position statement that support postponement and to conform this provision to amended Section 22-073.253, which now also refers to "substantial" modifications. The cross-reference to Section 22-073.252 is deleted because it is incorrect, and any cross-reference is made unnecessary by the addition of the word "substantially" to Section 22-053.113(f).

The adoption of Section 22-053.113(g), which allows good cause for "any other substantial and compelling reason as determined by the Administrative Law Judge," is necessary to give ALJs additional latitude to determine that good cause exists based on the facts presented in a particular case.

Section 22-053.12

Specific Purpose:

This section is substantially the same as former Section 22-053.12. A new "County requests" heading (Section 22-053.12) is added to conform to overall reorganization changes in Section 22-053. Section 22-053.121 is amended to specify that the postponement shall be at the ALJ's discretion.

Factual Basis:

The reorganization amendments are necessary for clarity and to conform this section to the overall reorganization of Section 22-053. The amendment to add the reference to the ALJ's discretion is necessary to specify the basis for postponement.

Section 22-053.13 (renumbered from Sections 22-053.13 and .15)

Specific Purpose:

Former Sections 22-053.13 and .15 are grouped together as new Section 22-053.13 under the heading “Administrative Law Judge postponements” because both former sections relate to this type of postponement. Former Section 22-053.151, relating to aid paid pending for ALJ postponements, is not included in new Section 22-053.13 because it has been moved to new Section 22-053.4, “Aid Pending Hearing.” New Section 22-053.14 groups together all provisions of Section 22-053 relating to aid pending a hearing.

Factual Basis:

These reorganization amendments are necessary for clarity and to conform this section to the overall reorganization of Section 22-053.

Section 22-053.14

Specific Purpose:

Former Sections 22-053.14 and .141 are duplicative of new Section 22-053.11, “Claimant requests,” and are now included in Section 22-053.11. Former Section 22-053.142 pertains to claimant-requested postponements and is therefore now included in Section 22-053.11, at Section 22-053.113(e).

New Section 22-053.14 is adopted to specify that a postponement is available on request if either party is not provided the required notice of the time and place of the hearing, and to specify that the postponement shall be deemed a postponement for good cause.

Factual Basis:

The reorganization amendments are necessary for clarity, to avoid duplication, and to conform to the overall reorganization of Section 22-053.

The adoption of new Section 22-053.14 is necessary to specify that postponement is available on request if a party failed to receive the notice of the time and place of the hearing required by Section 22-045.3 and to specify how such postponements are to be treated for purposes of good cause.

Section 22-053.4

Specific Purpose:

This section is adopted to group together all provisions in Section 22-053 pertaining to aid pending a hearing. The reorganized provisions are also amended, and new provisions are adopted, as set out below.

Factual Basis:

This reorganization is necessary for clarity and to conform to the overall reorganization of Section 22-053. The necessity for the other amendments and adoptions is described below.

Section 22-053.41 (renumbered from Section 22-053.111)

Specific Purpose:

This section is renumbered and amended. The section is amended to refer to “a first postponement” and to cross-reference new Section 22-053.111, which also relates to first time postponements in the Food Stamp Program.

This section is also amended to clarify that in a Food Stamp case, aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period, rather than “until the next scheduled hearing,” as provided in former Section 22-053.111.

Factual Basis:

The reorganization amendment is for clarity. The amendment referring to a “first postponement” is necessary to conform to new Section 22-053.111.

The amendment concerning the duration of aid pending is necessary to clarify that aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period. The current regulation is inaccurate in stating that aid pending continues until at least the next scheduled hearing. In the Food Stamp Program, aid pending ends at the end of the certification period if that occurs before the next scheduled hearing.

Section 22-053.42 (renumbered from Section 22-053.151)

Specific Purpose:

This section is renumbered and grouped with other aid pending provisions in Section 22-053. The section is also amended to specify a good cause standard, as contained in new Section 22-053.113, for continuation of aid pending when a hearing is postponed under Section 22-053.133. The good cause standard is in lieu of the prior standard of “necessary to insure a full and fair hearing” and not resulting “from any act or omission” by the claimant (found in former Section 22-053.151).

Factual Basis:

The reorganization amendments are made for clarity and conformity with the overall reorganization of Section 22-053. The amendment adopting the good cause standard is necessary to have a clear, flexible standard and for uniformity with other provisions in Section 22-053 that condition continuation of aid pending on good cause for a postponement.

Section 22-053.43

Specific Purpose:

This section is adopted to specify the effect of a good cause postponement on the duration of aid pending in programs other than the Food Stamp Program. The section specifies that aid pending continues at least until the next scheduled hearing if a postponement was for good cause.

Factual Basis:

This adoption is necessary to make explicit the effect of a good cause postponement on aid paid pending and for consistency with new Section 22-072.64 (renumbered from Section 22-072.65), which provides that aid pending ceases when a postponement is granted without good cause (except for first time postponements in the Food Stamp Program).

Section 22-053.431

Specific Purpose:

This section is adopted to specify the effect of a good cause postponement on the duration of aid pending in the Food Stamp Program. The section specifies that if a postponement is granted for good cause after the initial postponement, aid pending continues until at least the earlier of the next scheduled hearing or the end of the certification period.

Factual Basis:

This adoption is necessary to make explicit the effect of a good cause postponement on aid paid pending in the Food Stamp Program, after the initial postponement. This adoption is also necessary for consistency with new Sections 22-072.64 and 22-072.641 (renumbered from Section 22-072.75 and .751), which provide that aid pending ceases when a postponement is granted without good cause, except for first time postponements in the Food Stamp Program, and for consistency with new Section 22-072.65 (renumbered from Section 22-072.76), which provides that aid pending ceases in the Food Stamp Program when the certification period expires.

Section 22-054.221

Specific Purpose:

The specific purpose of these amendments is to a) repeal reference to good cause in determining that a hearing request is abandoned if the claimant fails to appear in person or by authorized representative at a scheduled state hearing; and b) add that a hearing request will be dismissed if the claimant fails to appear in person or by authorized representative at the scheduled hearing.

Factual Basis:

These amendments are necessary because: a) at the time the claimant fails to appear at the hearing, it is not known whether he/she had good cause for not appearing at the hearing, yet the hearing request is considered abandoned; and b) current Section 22-054.221 states that if a claimant fails to appear at a hearing in person or by authorized representative, the hearing request is considered abandoned, but does not specify what are the consequences of such abandonment. The consequence of an abandonment is the dismissal of the hearing request. However, the claimant's right to have a new hearing following such dismissal is established in the proposed new language of Section 22-054.222.

Section 22-054.222

Specific Purpose:

The current language in Section 22-054.222 provides that if the claimant fails to attend the hearing in person or by authorized representative, but within ten days of the hearing date establishes good cause for not appearing, he/she may reinstate the hearing request. The proposed new language in Section 22-054.222 provides that if the claimant fails to attend the hearing, a dismissal decision will be sent to the claimant. The claimant has the right to request a new hearing and if the claimant establishes good cause for failing to attend the initial hearing, the decision for dismissal is set aside.

Factual Basis:

This amendment is necessary to make the state hearing process as it pertains to nonappearances more fair to both the claimant and the county. In the current process, if the claimant fails to attend the hearing and does not request reinstatement of the hearing within ten days, he/she receives a decision dismissing the claim. If the claimant, after receiving a dismissal decision establishes good cause for failing to attend the hearing, the Department grants a rehearing.

If the claimant attends the rehearing, a hearing on the merits is conducted for the first time. Since the merits of the case are being discussed for the first time at the rehearing, the losing party has no right to request a rehearing.

The proposed new language in Section 22-054.222 remedies this inequity for both parties by permitting the Department to grant a "new hearing" when the claimant has established good cause for not attending the initial hearing (see also Section 22-065.6). Both the county and the claimant would have a right to request a rehearing if dissatisfied with the decision in the "new hearing."

Sections 22-054.222(a)(1) and (2)

Specific Purpose/Factual Basis:

The specific purpose of these amendments is to change the tense from the present to the past in the language in Section 22-054.222(a)(1). "Is" is changed to "was" for clarity. Also, Section 22-054.222(a)(2) corrects a cross reference for clarity.

Section 22-054.222(b)

Specific Purpose:

The specific purpose of this amendment is to change language in the current regulation that indicates that if the hearing is rescheduled, any applicable aid paid pending will be reinstated to "if a new hearing is granted and the decision dismissing the claim is set aside," any applicable aid paid pending will be reinstated.

Factual Basis:

This amendment is necessary because under the proposed new language in Section 22-054.222, a decision dismissing the claim will be issued immediately upon the claimant's failure to appear at the hearing. Under the proposed new language in Section 22-054.222, a hearing is not rescheduled. Rather, a new hearing is granted. Also, since a decision dismissing the claim is issued immediately, it is necessary to state that the decision will be set aside and aid pending reinstated.

Section 22-054.222(c)

Specific Purpose:

The specific purpose of this amendment is to change language in the current regulation that states that if the hearing is not rescheduled or if the claimant does not request a reinstatement within ten days of the hearing date, the claimant will be notified of the reasons for the decision and the right to request a rehearing. The proposed new language states that if a new hearing is not granted, and the decision dismissing the claim is not set aside, the claimant shall be notified of the specific reasons the decision was not set aside and of the right to appeal to Superior Court.

Factual Basis:

The amendments to this regulation are necessary because under the proposed new language in Section 22-054.222, a decision dismissing the claim will be issued immediately upon the claimant's failure to attend the hearing. Under the proposed new language in Section 22-054.222, a hearing is not rescheduled, rather a new hearing is granted. Since a decision is issued immediately, it is necessary to state that if a new hearing is not granted, the decision dismissing the claim will remain in effect.

The prior regulation states that the claimant will be notified in writing as to the reasons for the decision, but does not clarify to what decision it referred. The prior regulation makes no reference to a decision prior to Section 22-054.222(c). It is necessary to clarify that the claimant will be notified in writing as to the specific reason the decision dismissing the claim will remain in effect.

Finally, it is necessary to change the notification to the claimant about rehearing rights to a notification that the only appeal right is to the Superior Court.

Sections 22-059.1 and .11

Specific Purpose:

The specific purpose of these amendments is to exclude "communications to the Department after the close of the hearing record" rather than "subsequent to the hearing" and to simplify and clarify the specific wording of the regulations.

Factual Basis:

These amendments are necessary to clarify language in the current regulations. In many hearings, the record is left open in order for the ALJ to obtain additional evidence from the parties. This amendment clarifies that communications made while the record is left open are not necessarily prohibited, while communications after the record is closed are generally prohibited.

Section 22-061.2

Specific Purpose:

The specific purpose of this amendment is to provide that either the Chief ALJ "or his/her designee" shall notify both parties, not just the claimant, that the case is being assigned to another ALJ because the ALJ who conducted the hearing is unavailable.

Factual Basis:

This amendment is necessary to conform the regulation to common practice, namely that a designee of the Chief ALJ notifies the claimant that the case has been reassigned because the ALJ who conducted the hearing is unavailable.

This amendment is also necessary because the county, as well as the claimant, is entitled to be notified if an ALJ other than the one who heard the case will be writing the decision in the case.

Sections 22-063.11, .111, and .112

Specific Purpose:

The specific purpose of this amendment is to renumber Section 22-063.111 to Section 22-063.112 and Section 22-063.112 to Section 22-063.111.

Factual Basis:

This amendment is necessary to reorganize this section in a more logical order. The notice to the parties advises first of rehearing rights, then of judicial review, not vice versa as in the current regulation.

Sections 22-063.2, .21, and .22

Specific Purpose:

The purpose of this amendment is to divide the substance of Section 22-063.2 into two subsections because the current regulation involves two separate circumstances that are included in one sentence. In the proposed new first sentence, if the Director renders an alternate decision, he/she shall mail a copy of the proposed decision with the alternate decision. In the second subsection, if the Director orders a further hearing, the Director shall mail a copy of the voided proposed decision with the notice of the scheduled further hearing.

Factual Basis:

This amendment is necessary to accurately state the Director's responsibilities in two unlike situations, i.e. issuing an alternate decision and scheduling a further hearing. The current regulation includes both of these situations in one sentence and inaccurately states the Director's responsibilities regarding further hearings.

The amendment divides these two unlike situations into two sentences. The first sentence addresses the Director's duty to mail the proposed decision with the Director's alternate decision. The second sentence states that if the Director orders a further hearing, he/she shall mail a copy of the ALJ's voided proposed decision with the notice of the scheduled further hearing. The current regulation inaccurately states that if the Director orders a further hearing, a copy of the final decision shall be mailed with the proposed decision. There can be no final decision issued because a further hearing has been scheduled.

Section 22-064.1

Specific Purpose:

The specific purpose of this amendment is to substitute "tape recording of the hearing" for "verbatim record of the testimony and exhibits" as the applicable portion of the exclusive record for the decision. Also, such materials are available to the parties for three years after "any decision issued by the Director" instead of after "the decision of the Director." The term "Administrative Law Judge's proposed decision" is changed to "decision."

Factual Basis:

This amendment is necessary to properly state that the tape recording is part of the exclusive record of the hearing since there is no verbatim record other than the tape recording. The language referring to "any decision issued by the Director" is more precise and grammatically correct than "the decision of the Director." The term "Administrative Law Judge's proposed decision" is changed to "decision" because ALJs in most cases do not write proposed decisions. The term "decision" may include a proposed decision.

Sections 22-065.111 and .112 -- Renumbered

Specific Purpose:

The specific purpose of these amendments is to reformat these sections and to renumber Section 22-065.111 to 22-065.112 and Section 22-065.112 to 22-065.111. Also, the word "rehearing" is being repealed from renumbered Section 22-065.112 because it is superfluous.

Factual Basis:

The purpose of this amendment is to reorganize this subsection in a more logical order. The fact that a rehearing request need not be on any particular form should precede the reference that the rehearing requests involving CDHS should be mailed to CDSS.

Handbook Section 22-065.112(a) -- Deleted

Specific Purpose/Factual Basis:

The removal of Handbook Section 22-065.112(a) is necessary to avoid duplication since the language is being adopted as a regulation in Section 22-065.113.

Section 22-065.113

Specific Purpose:

The specific purpose of this amendment is to adopt a new subsection that states that when a party requests a rehearing, that party shall specify the reasons for the rehearing request.

Factual Basis:

This adoption is necessary to clarify that a party needs to specify the reasons a rehearing is being requested, rather than simply asking for a rehearing.

Section 22-065.2

Specific Purpose:

The specific purpose of this amendment is to state correctly that the Director shall mail a copy of the rehearing request "to" the other party rather than "on" the other party.

Factual Basis:

This amendment is necessary to correct improper grammar.

Sections 22-065.4, .41, and .42

Specific Purpose:

The specific purpose of these amendments is to: 1) Clarify that the Director may require review of one, several or all issues regardless of whether a rehearing or a rehearing on the record has been ordered; 2) More clearly identify an oral rehearing and a rehearing on the record, to distinguish between the two; and 3) Amend Section 22-065.41 to clarify that in the case of a rehearing on the record, the ALJ must consider additional "written or documentary" evidence submitted by the claimant or county.

Factual Basis:

These amendments are necessary as follows:

- a) Section 22-065.4 is amended to clarify that the Director may order an ALJ to review, one, several or all issues presented for review in the original hearing regardless of whether an oral rehearing or rehearing on the record is ordered. This section clarifies current Section 22-065.42 and makes specific the Director's right to limit the issues regardless of whether he/she orders an oral hearing or a rehearing on the record.
- b) Section 22-065.41 refers to "reconsideration of the decision on the basis of the evidence in the record". "Rehearing on the record" is more concise and is the language that the Department generally uses to describe the situation where there is no oral rehearing. Also evidence in a rehearing on the record will be written or documentary rather than oral. Also, the language in Section 22-065.411 is reformatted as a part of Section 22-065.41.
- c) Section 22-065.42 is amended to clarify that the Director has the right to order an oral rehearing (rather than a "new hearing") as distinguished from a rehearing on the record established under Section 22-065.41.

Sections 22-065.5 and .51

Specific Purpose:

The specific purpose of this amendment is to clarify the language in the current Section 22-065.5, including adding a set time period for requesting an oral rehearing. It is the intent of Section 22-065.5 to permit either party to request an oral rehearing instead of a rehearing on the record.

Factual Basis:

This amendment is necessary to clarify the purpose of Section 22-065.5. The language in the current Section 22-065.5 is unclear and ambiguous.

Sections 22-065.6, .61, .62, and .63

Specific Purpose:

This specific purpose of this amendment is to revise language stating that a Decision of the Director issued upon a rehearing shall not be subject to a further state hearing.

Factual Basis:

This amendment is necessary to eliminate vague language, specifically the reference to a "further state hearing", and to more specifically state when a rehearing will not be granted.

Revised Section 22-065.6 specifies three circumstances when a rehearing will not be granted: 1) on a rehearing decision, 2) on a hearing request that has been dismissed pursuant to Section 22-054.4, and 3) on a compliance issue.

Section 22-069.121

Specific Purpose:

This section is being adopted to specify that county responsibilities include the responsibility to provide the ALJ with a copy of the original hearing request at the hearing.

Factual Basis:

This section is necessary for consistency with amendments made to Section 22-004.22.

Section 22-069.122 -- Renumbered from Section 22-069.121

Specific Purpose:

The specific purpose of this amendment is to substitute the word "review" for "investigation" in describing the county responsibility in the state hearing process.

Factual Basis:

This amendment is necessary to more accurately reflect the county responsibility in the hearing process. The county representative in the state hearing is not an investigator and is not responsible for investigation. Rather, the county representative must first review the case to determine what the other county responsibilities are.

Sections 22-069.122 and .123 -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-069.122 and .123, are being renumbered to Sections 22-069.123 and .124, respectively for consistency of format and ease of use.

Section 22-071.12

Specific Purpose:

This section is amended to add the phrase "For CalWORKs and Food Stamp cases" to both Section 22-071.12(MR) and Section 22-071.12(QR).

Factual Basis:

This amendment is necessary to clarify that Section 22-071.12(MR) and Section 22-071.12(QR) apply only to CalWORKs and Food Stamp cases. State hearings are conducted in other programs such as In-Home Supportive Services (IHSS), Medi-Cal, Adoption Assistance Program, and AFDC-Foster Care (AFDC-FC). Section 22-071.13 applies to all programs other than CalWORKs and Food Stamps.

Section 22-071.13--New

Specific Purpose:

This section is being adopted to state when adequate notice is required in cases other than CalWORKs and Food Stamps.

Factual Basis:

This section is necessary to clarify when adequate notice is required in cases that do not involve CalWORKs or Food Stamps.

Section 22-071.131-- Renumbered

Specific Purpose/Factual Basis:

This section is renumbered from Section 22-071.121 and a reference to Sections 22-071.12 and .13 is added because this regulation relates to both sections.

Sections 22-071.14 through .19--Renumbered

Specific Purpose/Factual Basis:

Sections 22-071.13 through 22-071.18 are being renumbered because a new Section 22-071.13 has been added.

Section 22-071.19--Repealed

Specific Purpose/Factual Basis:

Current Section 22-071.19 is being repealed because there is no longer a Transitional Child Care Program.

Sections 22-072.51 (Handbook), .52, .521 (Handbook), and .522

Specific Purpose:

These sections are being amended to add the word “hearing” to describe “request.”

Factual Basis:

These amendments are necessary to clarify what is meant by request in terms of the type of request that must be filed before aid pending is initiated.

Section 22-072.522(a)

Specific Purpose:

This section is amended to specify the grounds for a good cause finding that supports payment of aid pending in the Food Stamp Program when a hearing request is filed after the effective date of the proposed action.

Factual Basis:

Aid pending is generally not paid when a recipient files a hearing request after the effective date of the proposed action. A different rule applies in the Food Stamp Program. Under Section 22-072.522, aid pending is paid in the Food Stamp Program if good cause is established for filing a request after the effective date of the action.

Former Section 22-072.522(a) states that the criteria for good cause in this circumstance are those specified in former Section 22-053.16. Section 22-053.16 is now Section 22-053.113, in the reorganized postponement section. Most of the criteria specified in new Section 22-053.113 (and former Section 22-053.16) do not relate to late hearing requests, but rather relate only to postponement/inability to appear on a scheduled hearing date.

Section 22-072.522(a) therefore must be amended to correctly state the criteria for good cause in this circumstance, that is, the criteria from new Section 22-053.113 (the good cause for postponement section) that relate to good cause for failing to file a hearing request before the effective date of the proposed action.

Sections 22-072.6 et seq. -- Repealed

Specific Purpose:

The specific purpose is to repeal the entire section referring to an aid pending issue in the Transitional Child Care (TCC) program.

Factual Basis:

This amendment is necessary because with the repeal of the TCC program effective January 1, 1998, any reference to TCC in the aid pending regulations is obsolete.

Sections 22-072.6, .61 and .611 -- Renumbered

Specific Purpose/Factual Basis:

Renumbered Section 22-072.611 is being amended to instruct counties that if aid pending was applicable, it should be reinstated if the claimant failed to attend the scheduled state hearing, but a rehearing is scheduled because the claimant established good cause for failing to attend that hearing. Aid paid pending is issued because there has been no decision on the merits.

Renumbering of these sections is necessary because of the repeal of current Section 22-072.6. Section 22-072.7 becomes Section 22-072.6, Section 22-072.71 becomes Section 22-072.61 and Section 22-072.711 becomes Section 22-072.611.

Section 22-072.72 -- Repealed

Specific Purpose:

The purpose is to repeal Section 22-072.72 that states that aid pending shall cease when the claim has been denied or dismissed by the preliminary hearing procedure.

Factual Basis:

This amendment is necessary because it is the intent of the Department to repeal the preliminary hearing process in these regulations. Any reference to the preliminary hearing process would thus be obsolete.

Sections 22-072.73 and .731 -- Renumbered to Sections 22-072.62 and .621

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-072.732 -- Renumbered to Section 22-072.622

Specific Purpose:

The specific purpose of this amendment is to require the county to issue aid pending in a case where a further hearing is scheduled until at least the date of the further hearing. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary because the present regulation requires the retroactive reinstatement and continuation of aid paid pending where a further hearing has been scheduled, but does not address the fact that at the further hearing, the ALJ may discontinue aid pending.

Sections 22-072.74, .741, and .75 -- Renumbered to Sections 22-072.63, .631, and .64

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use, and correction of the cross-reference in new Section 22-072.64 is necessary to cite the correct reference in the amended regulations.

Section 22-072.751 -- Renumbered to Section 22-072.641

Specific Purpose:

The specific purpose of this amendment is to clarify that while aid pending ceases for a no good cause postponement, that provision does not apply to a "first time postponement" in the Food Stamp Program. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary to clarify that the exception to discontinuing aid pending applies only to a first time postponement in food stamps, not to all postponements in food stamps. This section is also being renumbered for consistency of format and ease of use.

Sections 22-072.76, .8, .81, .9, and .91 -- Renumbered to Sections 22-072.65, .7, .71, .8 and .81, respectively

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Sections 22-073.123 and .124(a)

Specific Purpose:

The specific purpose of this amendment is to repeal reference to "respective" when describing the county that should be notified when the SHD receives an oral hearing request and when the SHD should send a misdirected hearing request.

Factual Basis:

This amendment is necessary to repeal extraneous language.

Section 22-073.24

Specific Purpose:

The specific purpose of this amendment is to state that the county shall “advise SHD” if an interpreter may be necessary, rather than to “determine” if an interpreter will be necessary; and if a home hearing “might be appropriate” rather than “will be necessary.”

Factual Basis:

This amendment is necessary because the county does not “determine” if an interpreter is necessary, but rather advises the SHD if an interpreter is needed and the SHD schedules an interpreter. Also, the county does not establish if a home hearing is needed, but rather advises the SHD that a home hearing might be needed and the SHD then determines if a home hearing is needed and should be scheduled.

Sections 22-073.242 and .242(a)

Specific Purpose:

The specific purpose of this amendment is to add the word “known” before changes in the claimant's address or other circumstances the county is responsible to report to the SHD.

Factual Basis:

This amendment is necessary because the county can only be held responsible to report changes in the claimant's address or other circumstances if it knows of such changes.

Section 22-073.253

Specific Purpose:

The specific purpose of this amendment is to clarify that if the county does not make the position statement available “at least” two days prior to the hearing rather than “not less than” two days prior to the hearing, the hearing shall be postponed at the claimant's request. Also, the purpose of this amendment is to repeal the definitional last sentence of this subsection which defines a modification as a “substantive revision” and in the previous sentence the term “substantially” is being added prior to the word “modifies” to read “substantially modifies the position statement....”

Factual Basis:

This amendment is necessary to use more concise language in describing the county duty when to make a position statement available.

The amendment repealing the definitional last sentence and instead substituting “substantially modifies” for “modifies” in the prior sentence, is necessary to more concisely state under what circumstances the county must make a position statement available at least two working days prior to the hearing. “Substantially” is substituted for “substantively”, because it more accurately reflects the State Hearings Division policy regarding when an Administrative Law Judge should postpone a hearing at the claimant’s request.

Section 22-073.26

Specific Purpose:

The specific purpose of this amendment is to repeal the phrase "While preparing for the hearing" in describing the duty of a county representative to determine if a county eligibility worker or other witness would be helpful at the hearing and to add a phrase stating that the county representative may have any such persons available as witnesses at the hearing.

Factual Basis:

This amendment is necessary because:

- a) The phrase “while preparing for the hearing” is self-evident and gratuitous; and
- b) Once the county representative determines any such persons may be helpful to resolve an issue, the county may choose to have such persons as witnesses at the hearing.

Sections 22-073.35 and .37

Specific Purpose:

The specific purpose of this amendment is to move the second sentence of the current Section 22-073.35, which refers to the county representative having the authority to make binding stipulations, to its own Section 22-073.37.

Factual Basis:

This amendment is necessary because the first sentence of Section 22-073.35 addresses the county representative’s responsibility to have the case record available at the hearing, which is unrelated to the county representative's authority to make binding stipulations. Since Section 22-073.3 addresses all county representative responsibilities at the hearing, each individual responsibility needs its own subsection rather than combining two unrelated duties into one subsection.

Section 22-074, Section 22-075, and Section 22-076 -- Repealed

Specific Purpose:

The specific purpose of this amendment is to repeal Section 22-074, Section 22-075, and Section 22-076 that provide for preliminary hearings by the county.

Factual Basis:

This action is necessary to repeal the preliminary hearing process. There has been a preliminary hearing process in effect for over 20 years. That process has rarely been used. The initial purpose of that process was to give counties the opportunity to resolve issues at a local level hearing to reduce state hearing caseload. Since that process has rarely been utilized and has not resulted in reduced hearings, the Department has determined that these regulations should be repealed.

Section 22-077.1

Specific Purpose:

The specific purpose is to repeal reference to “the welfare department” when referring to the responsible county when the hearing is not held in that county. Also, to replace the term “choose” with the phrase “comply with.”

Factual Basis:

This amendment is necessary for clarity because not all counties refer to the county department responsible for social services as the “welfare department,” and to more accurately state the county’s duty when a hearing is held in a county other than the responsible county.

Sections 22-077.12, .121 and .122

Specific Purpose:

The specific purpose of this amendment is to clarify that at a minimum, the position statement must meet the requirements set forth in Section 22-073.251. These amendments are also being made to repeal Sections 22-073.121 and .122 because they are redundant and incomplete.

Factual Basis:

This amendment is necessary because when a county submits a position statement when it is not present at the hearing, the position statement must meet the requirements of Section 22-073.251. Sections 22-073.121 and 22-073.122 are redundant in that they repeat some of the requirements set forth in Section 22-073.251 and are incomplete in that they fail to include all the requirements of Section 22-073.251.

Section 22-077.123 -- Renumbered to Section 22-077.121

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-077.124 -- Renumbered to Section 22-077.122

Specific Purpose:

The specific purpose of this amendment is to renumber the section for consistency and to repeal language requiring the county to provide instructions that the position statement and attachments be presented to the ALJ at the hearing. The renumbering is necessary for consistency of format and ease of use.

Factual Basis:

This amendment is necessary for consistency in numbering and to repeal gratuitous language requiring the county that mails a position statement in an out-of-county case to provide instructions that the statement and attachments be given to the ALJ at the time of hearing.

Section 22-077.125 -- Renumbered to Section 22-077.123

Specific Purpose/Factual Basis:

This renumbering is necessary for consistency of format and ease of use.

Section 22-077.13

Specific Purpose:

The specific purpose is to repeal reference to "the welfare department" when referring to the responsible county when the hearing is not held in that county.

Factual Basis:

This amendment is necessary because not all counties refer to the county department responsible for social services as the "welfare department".

Section 22-077.2

Specific Purpose:

The specific purpose of this adoption is to add a new Section 22-077.2 permitting the responsible county to participate in the hearing by telephone when the hearing is not held in the responsible county.

Factual Basis:

This adoption is necessary to permit the responsible county to participate in the hearing by telephone in lieu of only submitting a position statement when the hearing is not held in the county responsible for aid. This allows the responsible county to verbally explain its actions and also provides the claimant an opportunity to confront and cross-examine the county that took the action which the claimant is disputing.

Section 22-078.13

Specific Purpose:

The specific purpose of this amendment is to substitute the phrase “rehearing decision is issued” for “rehearing is subsequently rendered” and to refer to “that” rehearing decision instead of “such” rehearing decision.

Factual Basis:

These amendments are necessary because the prior language lacked clarity and the new language more accurately reflects the requirement that the county comply with the rehearing decision.

Section 22-078.22 -- Repealed

Specific Purpose/Factual Basis:

This repeal is necessary because neither the CDSS nor the CDHS need the county to inform them of the claimant's right to contact the applicable department nor the claimant's right to, nor procedures for, requesting a state hearing.

Sections 22-078.23 and .231 -- Renumbered

Specific Purpose/Factual Basis:

Sections 22-078.23 and .231 are being renumbered to Sections 22-078.22 and .221, respectively for consistency of format and ease of use.

Section 22-078.4

Specific Purpose:

The specific purpose of this amendment is to specify actions CDSS is authorized to take, including seeking injunctive relief, as appropriate, when a county has failed to comply with a hearing decision.

Factual Basis:

This amendment is necessary to reference and emphasize remedies available to CDSS to ensure county compliance.

Section 22-078.62

Specific Purpose:

The specific purpose of this amendment is to state that the CDSS or CDHS “shall” send a notice to the county when its compliance is not appropriate rather than "will" send notice.

Factual Basis:

This amendment is necessary for clarity to confirm that CDSS or CDHS must send notice when the county compliance is not appropriate.

Section 22-085.1

Specific Purpose:

The specific purpose of this amendment is to permit a claimant to authorize a person "or organization" to represent him/her at a hearing.

Factual Basis:

This amendment is necessary to permit an organization, as well as a person, to represent a claimant at a hearing. This amendment is also necessary to be consistent with Section 22-001(a)(6) which defines an authorized representative as an individual or organization.

Section 22-085.12

Specific Purpose/Factual Basis:

The cross-references to Sections 22-085.22 and .221 are amended to reflect the amendments being made to this section.

Sections 22-085.2, .21, .211, .22, .221, and .222

Specific Purpose:

The specific purpose of these amendments is to permit the attorney who has not received written authorization from the mentally competent claimant to proceed with the hearing upon stating on the hearing record that the mentally competent claimant has authorized him/her to act as the representative. A non-attorney must still provide a written authorization from a mentally competent claimant. Under Section 22-085.221, the time limit for submitting the authorized representative form has been increased from five to ten days.

Factual Basis:

The current regulations require an attorney to submit a written authorization from the claimant post hearing. The new language in Sections 22-085.21 and .211 requires only that the attorney state on the record that the claimant is mentally competent and has authorized the attorney to act on his/her behalf. This will align the regulations with the practice in courtrooms and other administrative hearings. The time frame for submitting an authorized representative form contained in Section 22-085.221 has been increased to ten days because there are often delays in the authorized representative obtaining, or the ALJ receiving, the authorized representative form.

New Sections 22-085.22, .221 and .222 are reworded for clarity, but make no substantive changes to the prior regulations as those regulations apply to non-attorneys, except that they permit submission of the written authorization in 10 days rather than five days.

Sections 22-085.21, .22 and .221 -- Repealed

Specific Purpose/Factual Basis:

These sections are being repealed and are reworded in accordance with the specific purpose and factual basis as described in Section 22-085.2 above.

Section 22-085.5

Specific Purpose:

The specific purpose of this regulation is to add a new subsection requiring the county to send the authorized representative a copy of all notices and correspondence related to a conditional withdrawal or compliance with a state hearing decision.

Factual Basis:

Current Sections 22-085.3 and 4 require the county to provide notices, correspondence and decisions to the authorized representative concerning the state hearing. These sections do not clearly state whether the county has a duty to notify the authorized representative of any action regarding the state hearing once a conditional withdrawal is signed or once the county either submits a compliance report to the state or sends a notice of action on a compliance related issue. This adoption is necessary to clarify that the county must provide notice or correspondence to the authorized representative following a conditional withdrawal or a compliance.

Chapter 22-900 and Section 22-901

Specific Purpose:

This regulation is adopted to specify that the regulatory amendments referenced in the regulation only apply to notices of action issued after the date specified in the regulation.

Factual Basis:

This regulation is necessary in order to clarify the application of the referenced amendments. A date certain following filing with the Secretary of State is necessary in order to allow CDSS to give counties advance notice of the specific effective date of the provision and to allow counties to review their practices and translated forms provided by CDSS prior to that date.

b) Identification of Documents Upon Which Department Is Relying

Sections 11430.10(a) and 11435.65, Government Code

Section 44, Probate Code

7 CFR 273.15(a)(4), (b), (c), and (k)(2)(i)

c) Local Mandate Statement

These regulations impose a mandate upon county welfare departments but not upon school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et. seq. of the Government Code.

d) Statement of Alternatives Considered

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

The CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.